IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

TUESDAY, THE 10TH JULY 2007 / 19TH ASHADHA 1929

WP(C).No. 6365 of 2007(G)

AGAINST THE ORDER IN IA 692/06 IN OS.38/2003 of SUB COURT, PAYYANNUR

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PETITIONERS:

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1. **P.T.KARUNAKARAN NAMBIAR, AGED 51 YEARS, S/O.M.P.KARUNAKARAN, KANKOLE AMSOM,DESOM, KALEESWARAM, P.O.KANKOLE,TALIPARAMBA TALUK, KANNUR DISTRICT.**

2. **P.PARVATHI, W/O.P.T.KARUNAKARAN NAMBIAR, KANKOLE AMSOM DESOM, KALEESWARAM, P.O.KANKOLE, TALIPARAMBA TALUK, KANNUR DISTRICT.**

BY ADV. SRI.M.SASINDRAN
SRI.K.T.POULOSE (KORATTY)

RESPONDENT:

THE SYNDICATE BANK,PAYYANNUR BRANCH, PAYYANNUR, KANNUR DISTRICT, REPRESENTED BY ITS MANAGER AND PRINCIPAL OFFICER.

BY ADV. SRI.R.S.KALKURA

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 10/07/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC.NO.6365/2007N G

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: COPY OF THE JUDGMENT IN O.S.38/2003.

EXT.P2: COPY OF THE DECREE IN O.S.38/2003.

EXT.P3: COPY OF THE APPLICATION DTD. 7/11/2005 IN I.A.NO.982/2005.

EXT.P4: COPY OF THE APPLICATION IN I.A.NO.692/2006.

EXT.P5: COPY OF THE ORDER DTD. 6/12/2006.

/TRUE COPY/

KSS

M.N.KRISHNAN, J

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W.P.(C) No.6365 OF 2007

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Dated this the 10th day of July, 2007

JUDGMENT

This writ petition is filed seeking to set aside Ext.P5 order. At the outset, I may express my dissatisfaction in the way in which the Sub Judge's Court has passed a decree in a money suit. The suit is one for realisation of the amount under 5 transactions from the defendants by personally and by sale of property mortgaged to the bank. There is no dispute regarding the mortgage. The court below passed a decree holding that a first decree will be passed for the realisation of the principal loan amount and the second decree will be passed on calculation of interest regarding the interest due on a statement filed by the plaintiff bank. But I cannot consider those aspects in this writ petition for the reason that the challenge is only against the order passed under Section 152 of the Code of Civil Procedure. The plaintiff bank moved the court to correct the judgment and decree because the court below has omitted to grant the decree by sale of the mortgaged property. It is true that under Section 152 of the Code of Civil Procedure clerical or arithmetical mistakes in judgments, decree or

orders or errors arising therein from any accidental slip or omission may at any time be corrected by the court either of its own motion or on the application of any of the parties. When the suit is filed for realisation of the amount by way of sale of property and when there is no contest between the parties on that aspect and the court omits to grant the relief as prayed for, it can be nothing but an accidental omission. Therefore the court below has rightly considered it and allowed the judgment and decree to be corrected under Section 152 of the Code of Civil Procedure.

Therefore the order does not call for any interference and therefore the writ petition is dismissed. At the same time so far as interest is concerned, I think nothing has become final till this date and the court before allowing the interest or the rate of interest should hear both sides and incorporate the same in the judgment and decree. Interest may be added to original decree by way of amendment and not by way of passing a separate decree.

M.N.KRISHNAN, JUDGE

Cdp/-